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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 In re SILICON IMAGE, INC.
16 SECURITIES LITIGATION

Master File No. C 05-00456 MMC

CLASS ACTION

17 This Document Relates To:
18 All Actions

NOTICE OF MOTION AND MOTION FOR
APPOINTMENT OF WILLIAM S.
HAYMAN AND JOHN HERLIHY AS CO-
LEAD PLAINTIFFS AND TO APPROVE
THEIR SELECTION OF LEAD COUNSEL

Date: May 13, 2005

Time: 9:00 a.m.

Hon. Maxine M. Chesney

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NOTICE OF MOTION AND MOTION FOR APPOINTMENT OF WILLIAM S. HAYMAN AND JOHN
HERLIHY AS CO-LEAD PLAINTIFFS AND TO APPROVE THEIR SELECTION OF LEAD COUNSEL
Master File No. C 05-00456 MMC

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Friday, May 13, 2005 at 9:00 a.m., or as soon thereafter as the matter may be heard in the Courtroom of the Honorable Maxine M. Chesney, class members William S. Hayman ("Hayman") and John Herlihy ("Herlihy") (collectively, the "Silicon Image Lead Plaintiff Group" or the "Group") will move this Court for an order: (i) appointing the Group as lead plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"); (ii) approving the Group's selection of the law firms of Zwerling, Schachter & Zwerling, LLP ("ZS&Z") and Lovell Stewart Halebian, LLP ("LSH") as co-lead counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v); and (iii) granting such other and further relief as the Court may deem just and proper.

This motion is made on the grounds that the Group is the most adequate plaintiff to represent those who purchased or otherwise acquired Silicon Image, Inc. ("Silicon Image" or the "Company") securities between October 19, 2004 and January 24, 2005 (the "Class Period"). The Group has selected ZS&Z and LSH as co-lead counsel, both firms with substantial experience in prosecuting securities fraud class actions. This motion is based on this Notice of Motion, the supporting Memorandum of Points and Authorities, the Declaration of Richard A. Speirs in Support of Notice of Motion and Motion for Appointment of William S. Hayman and John Herlihy as Co-Lead Plaintiffs and to Approve Their Selection of Lead Counsel ("Speirs Decl."), the pleadings, other files and records in the above-captioned action and such other written or oral argument as may be presented to the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Presently pending before this Court is a securities class action brought on behalf of investors who purchased or otherwise acquired Silicon Image securities during the Class Period. These actions allege violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. Defendants are Silicon Image, Steve Tirado, the Company's Chief Executive Officer and President, and Robert Gargus, the Company's Chief Financial Officer and Vice President of Finance and Administration. As explained below, the Group is the most adequate plaintiff to represent the class.

STATEMENT OF FACTS

Silicon Image is a Delaware corporation that maintains its principal place of business at 1060 East Arques Avenue, Sunnyvale, California. (*See Compl.*¹ ¶ 7.) The Company is a leader in multi-gigabit semiconductor solutions for the secure transmission, storage and display of rich digital media. It designs, develops and markets multi-gigabit semiconductor and system solutions for a variety of communications applications demanding high-bandwidth capability. (*See id.* ¶ 23.)

The claims asserted in the complaint arise out of allegations that the Defendants embarked upon a scheme and course of conduct in which they disseminated materially false and misleading statements and/or concealed material adverse facts about fundamental disputes and distractions at the Company. Among other things, Defendants' actions: (1) deceived the

¹ References to the complaint filed in this action, *Curry v. Silicon Image, et al.*, No. 3-05-cv-00456-MMC, shall hereinafter appear as "Compl." or "Complaint."

1 investing public regarding Silicon Image's business, operations, management and the intrinsic
2 value of its common stock; (2) enabled Silicon Image insiders to sell more than \$6,800,000 of
3 their personally-held common stock to the unsuspecting public; and (3) caused Hayman, Herlihy
4 and other class members to purchase Silicon Image securities at artificially inflated prices. (*See*
5 *id.* ¶ 16.)

6 In a press release dated October 19, 2004, Silicon Image announced its third quarter 2004
7 financial results, during which the Company achieved revenues of \$47.9 million. (*See id.* ¶ 27.)
8 On November 8, 2004, the Company filed its Form 10Q report with the SEC. The 10Q, signed
9 by Defendant Gargus, included guidance projecting an increase in "storage revenues (including
10 licensing) . . . from the third quarter by \$2.0 to \$2.5 million in the fourth quarter of 2004." (*See*
11 *id.* ¶ 29.)

12 On November 11, 2004, Silicon Image appointed Steven Laub as Chief Executive Officer
13 and President. Fundamental disputes immediately developed between Mr. Laub and others at
14 Silicon Image regarding Mr. Laub's relative role and responsibility. (*See id.* ¶ 31.) However,
15 the Company failed to disclose this material fact to the investing public and, to date, has never
16 clarified the cause(s) of those altercations. (*See id.* ¶¶ 31-32.) Further, after the fundamental
17 disputes commenced, Company insiders who were in an excellent position to know about the
18 disputes and their material adverse effects sold 281,742 shares of Silicon Image stock. (*See id.* ¶
19 33.)

20 On January 25, 2005, Silicon Image began to disclose the consequences of the
21 fundamental disputes. Namely, the Company issued a press release for its fourth quarter 2004
22 financial results indicating that it "achieved revenue of \$46.1 million for the fourth quarter, a
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1 decrease of 4 percent from revenue of \$47.9 million in the third quarter of 2004.” (*See id.* ¶ 35.)
 2 Defendant Gargus also acknowledged that the Company posted a decline in licensing revenue for
 3 the quarter. (*See id.* ¶ 36.) That same day, the Company also issued a separate press release
 4 announcing the resignation of Steven Laub and the appointment of Steve Tirado as Chief
 5 Executive Officer. (*See id.* ¶ 37.) By the end of the trading session on January 25, 2005, Silicon
 6 Image stock lost over 13% of its value. (*See id.* ¶ 39.) Further, on January 31, 2005, Silicon
 7 Image announced that it had learned on January 25, 2005 that the SEC was investigating the
 8 trading of Company securities. (*See id.* ¶ 34.)

9 ARGUMENT

10 I. OVERVIEW OF APPLICABLE LAW

11
 12 On December 22, 1995, Congress amended the Exchange Act through the PSLRA. The
 13 PSLRA, among other things, sets forth a procedure for providing notice to members of the
 14 purported class of the pendency of a class action, the claims asserted, the purported class period
 15 and the requirements for selection of lead plaintiff to oversee the class actions. 15 U.S.C. § 78u-
 16 4(a)(3). Specifically, the PSLRA provides that:

17 Not later than 20 days after the date on which the complaint is filed, the
 18 plaintiff or plaintiffs shall cause to be published, in a widely circulated national
 19 business-oriented publication or wire service, a notice advising members of the
 purported class—

- 20 (I) of the pendency of the action, the claims asserted
 21 therein, and the purported class period; and
- 22 (II) that, not later than 60 days after the date on which
 23 the notice is published, any member of the
 24 purported class may move the court to serve as lead
 25 plaintiff of the purported class.

1 15 U.S.C. § 78u-4(a)(3)(A)(i). The first notice relating to the pending action against the
 2 Defendants was issued on February 1, 2005, informing class members that the class period
 3 alleged was from October 19, 2004 to January 24, 2005. (See Ex. A, Speirs Decl.)

4 The PSLRA directs the Court to consider any timely motions (brought within sixty days)
 5 by putative class members to serve as lead plaintiff in response to the published notice: (i) no
 6 later than ninety days after the date of publication of the notice; or (ii) if more than one action
 7 asserting substantially the same claim or claims has been filed and any party has sought to
 8 consolidate those actions for pretrial purposes or trial, as soon as practicable after the Court
 9 decides the pending motion(s) to consolidate. 15 U.S.C. § 78u-4(a)(3)(B).

10 The PSLRA also provides a structure for the appointment of lead plaintiff in securities
 11 class actions. 15 U.S.C. § 78u-4(a)(1). The PSLRA creates a rebuttable presumption that the
 12 “most adequate plaintiff” to serve as lead plaintiff is the person who:
 13

- 14 (aa) has either filed the complaint or made a motion in response to
 15 [aforementioned] notice . . .;
- 16 (bb) in the determination of the court, has the largest financial interest in the
 17 relief sought by the class; and
- 18 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of
 19 Civil Procedure.

20 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

21 **II. THE GROUP MEETS ALL REQUIREMENTS OF THE PSLRA AND SHOULD 22 BE APPOINTED LEAD PLAINTIFF**

23 ***A. The Group’s Motion to Serve as Lead Plaintiff is Timely***

24 In compliance with the PSLRA, the earliest notice informing class members of this
 25 action’s pendency, and of their right to file a motion for appointment as lead plaintiff, was

published on February 1, 2005. 15 U.S.C. § 78u-4(a)(3)(A)(i). Within sixty days after publication of the notice, any person who is a member of the proposed class may move the Court to be appointed lead plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). The Group's motion to serve as lead plaintiff is filed in a timely fashion. Thus, the initial requirement is satisfied.

B. It Is Believed That the Group Has the Largest Financial Interest in the Relief Sought by the Class

Pursuant to the PSLRA, the next consideration in determining the "most adequate plaintiff" to serve as lead plaintiff is, in the determination of the Court, the plaintiff with the largest financial interest. 15 U.S.C. § 78-4(a)(3)(B)(iii)(I)(bb). It is believed that the Group has the largest financial interest in the relief sought by the class.

Although the PSLRA's amendments to the Exchange Act do not specifically indicate the manner in which the "largest financial interest" should be calculated, the PSLRA provides that the plaintiff's damages in any securities fraud class action may be measured by:

the difference between the purchase price or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after the dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.

15 U.S.C. § 78u-4(e)(2).

Alternatively, where the plaintiff continues to hold the security that is the subject of the action, the PSLRA provides for damages to be measured by:

the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.

15 U.S.C. § 78u-4(e)(1).

1 Hayman has suffered \$114,266.26 in losses.² (See Speirs Decl. ¶ B.) Additionally,
 2 Herlihy has suffered \$127,632 in losses. (See Speirs Decl. ¶ C.) The charts attached as Exhibits
 3 B and C to the Speirs Decl. fully set forth facts relevant to determine that the Group is believed
 4 to have the largest financial interest in the relief sought by the class.

5 The PSLRA was intended to encourage investors like Hayman and Herlihy to come
 6 forward to serve as lead plaintiff. The lead plaintiff provision in the PSLRA arose out of
 7 Congress' concern that some class action securities litigation had become a "lawyer-driven"
 8 enterprise, in which law firms directed the litigation with little involvement from the named
 9 plaintiffs, who usually owned only a small number of shares, or other class members. Congress
 10 sought to "protect investors who join class actions against lawyer-driven lawsuits by giving
 11 control of the litigation to lead plaintiffs with substantial holdings of the securities of the issuer."
 12 Conference Report on Securities Litigation Reform, H.R. Rep. No. 104-369, 32 (1995).

14 Thus, by appointing the Group as Lead Plaintiff, the Court would comply with the sound
 15 policy instituted by the PSLRA that such class actions be controlled by investors with substantial
 16 losses.

17 ***C. The Group Satisfies the Requirements of Rule 23***

18 In addition to satisfying the specific requirements set forth above, the proposed lead
 19 plaintiff must also satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.
 20 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). Rule 23(a) provides that a party may serve as a class
 21 representative only if the following four requirements are satisfied:
 22

23 ² Losses were calculated using a ninety-day PSLRA weighted average price based on the closing price and total
 24 trading for each day.

1 (1) the class is so numerous that joinder of all members is impracticable, (2) there
2 are questions of law or fact common to the class, (3) the claims or defenses of the
3 representative parties are typical of the claims or defenses of the class, and (4) the
4 representative parties will fairly and adequately protect the interests of the class.

5 For purposes of appointing a lead plaintiff, however, a wide-ranging analysis under Rule
6 23 is not appropriate. Rather, the Court's should focus on the requirements of typicality and
7 adequacy of the proposed lead plaintiff. *In re Cavanaugh*, 306 F. 3d 726, 730 (9th Cir. 2002).
8 As discussed below, the Group satisfies both the typicality and adequacy requirements of Rule
9 23(a), thereby supporting its appointment as lead plaintiff.

10 **1. The Group's Claims are Typical of the Claims of the Class**

11 "The typicality requirement of Rule 23(a)(3) is satisfied when the named plaintiffs have
12 (1) suffered the same injuries as the absent class members, (2) as a result of the same course of
13 conduct, and (3) their claims are based on the same legal issues." *Armour v. Network*
14 *Associated*, 171 F. Supp. 2d 1044, 1052 (N.D. Cal. 2001).

15 The Group's claims are typical of those of the class. Its claims arise out of allegations
16 that the Defendants embarked upon a scheme and course of conduct in which they made
17 misleading statements to inflate artificially the price of Silicon Image's common stock, in
18 violation of federal securities laws. Hayman and Herlihy, like all class members, relied upon the
19 integrity of the market in purchasing Silicon Image common stock and suffered damages when
20 the truth about the Company's operating results and financial condition was revealed. Thus, the
21 Group satisfies the typicality requirement.
22

1 **2. The Group Will Fairly and Adequately Represent the Interests of the**
 2 **Class**

3 The PSLRA directs the Court, in evaluating the adequacy of the proposed lead plaintiff,
 4 to limit its inquiry to the existence of any conflicts between the interests of the proposed lead
 5 plaintiff and the members of the class. The primary elements of adequate representation are: (i)
 6 the representative must share common interests with the unnamed members of the class; and (ii)
 7 it must appear that the representative will vigorously prosecute the interests of the class through
 8 qualified counsel. See *Armour v. Network Assocs., Inc.*, 171 F. Supp. 2d at 1052 (citing *In re*
 9 *Computer Memories Sec. Litig.*, 111 F.R.D. 675, 682 (N.D. Cal. 1986)).

10 Here, the Group's interests are clearly aligned with those of the other class members. As
 11 detailed above, the Group's claims share common questions of law and fact with the class, and
 12 its claims are typical of the other class members. Further, by virtue of its financial interests and
 13 choice of lead counsel, it is clear that the Group will vigorously prosecute the interests of the
 14 class.

15 **D. The Court Should Approve the Group's Choice of Lead Counsel**


16 Pursuant to the PSLRA, the lead plaintiff is permitted, subject to the Court's approval, to
 17 select and retain counsel to represent the class. 15 U.S.C. § 78u-4(a)(3)(B)(v). The Group has
 18 selected and retained ZS&Z and LSH to represent it and the putative class as co-lead counsel.
 19 As fully set forth in the Speirs Decl., proposed co-lead counsel have extensive experience in the
 20 area of securities litigation and other complex litigation, and have prosecuted many securities
 21 fraud class actions. In that regard, ZS&Z and LSH have been responsible for significantly
 22 successful results on behalf of injured investors in numerous securities class action lawsuits, as
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1 well as legal decisions that enable litigation such as this to be successfully prosecuted. (See
2 Speirs Decl., Ex. D, E.)

3 **III. CONCLUSION**

4
5 For the foregoing reasons, the Group respectfully requests that the Court: (i) grant its
6 motion to be appointed as lead plaintiff; (ii) approve its choice of ZS&Z and LSH as co-lead
7 counsel for the putative class; and (iii) grant such other and further relief as the Court may deem
8 just and proper.

9 DATED: April 4, 2005


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